

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

August 20, 1986

Harry L. Wadding	:	
	:	
v.	:	Docket No. PENN 84-186-D
	:	
	:	
Tunnelton Mining Co.	:	

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka, and Nelson,
Commissioners

ORDER

BY THE COMMISSION:

On June 16, 1986, Harry L. Wadding filed with the Commission a Motion to Have the Judgment Set Aside in the above matter. The decision of Commission Administrative Law Judge Gary Melick in this proceeding, dismissing Mr. Wadding's discrimination complaint, was issued on June 18, 1985. 7 FMSHRC 896 (June 1985)(ALJ). Wadding failed to file a timely petition for discretionary review of Judge Melick's decision within the 30-day period prescribed by the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982). 30 U.S.C. § 823(d)(2)(A)(1). See also 29 C.F.R. § 2700.70(a). The Commission did not direct review on its own motion, and by operation of the statute the judge's decision became a final decision of the Commission 40 days after its issuance. 30 U.S.C. § 823(d)(1). Under these circumstances, we construe Wadding's motion as a request for relief from a final Commission order. 29 C.F.R. § 2700.1(b) (Federal Rules of Civil Procedure apply in absence of applicable Commission rule); Fed. R. Civ. P. 60 (Relief from Judgment or Order). See William A. Haro v. Magma Copper Co., 5 FMSHRC 9-10 (January 1983); Gerald D. Boone v. Rebel Coal Co., 4 FMSHRC 1232, 1233 (July 1982).